

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Paul Madison and Milari Madison  
Appeal No. 04-7

Decided: January 21, 2005

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

## II. CASE HISTORY

In June of 2004, the USBC building official of Loudoun County ("building official") inspected an empty historic home at the request of Paul Madison and Milari Madison (the "Madisons"), owners of the property, which is located at 40153 Janney Street. The Madisons requested the inspection to determine whether the home was unsafe under the USBC. The Madisons believed that if the house was determined to be unsafe under the USBC they would be able to demolish the house without having to obtain approval from the Loudoun County Historic District Review Committee.

The USBC building official determined that the building was not unsafe under the provisions of the USBC which governed unsafe conditions during construction. Those provisions were used since there were building permits on file for the renovation of the house and for an addition to the house.

The Madisons appealed the building official's decision to the Loudoun County Board of Building Code Appeals ("County USBC board"), which heard the appeal in July of 2004 and ruled to uphold the decision of the building official.

The Madisons further appealed to the Review Board in August of 2004. In processing the appeal, Review Board staff conducted an informal fact-finding conference in September of 2004. At the conference, Review Board staff raised the issue of whether a

valid appeal existed based on whether the decision of the building official was a non-application of the USBC rather than an application of the USBC since the Madisons' house was determined to be in compliance with the USBC and not in violation of it. In addition, Review Board staff questioned whether the building permits were still active as ownership of the property had changed and the Madisons had stated that no work had been done on the home since they purchased it.

At the informal fact-finding conference, the building official agreed to review the building permits to determine whether they were still valid and, if determining that the building permits were no longer active, to evaluate the house under the unsafe provisions in the existing buildings part of the USBC rather than using the construction part of the USBC, since the standards for determining whether a building is unsafe under the two parts of the USBC were different.

In correspondence between the Madisons and the building official it was determined that the permits were no longer active and the building official was requested to inspect the house under the existing building unsafe provisions of the USBC. An inspection was conducted in October of 2004 and the building official, by letter dated November 15, 2004, determined that the house was unfit for human habitation but not unsafe.

An appeal hearing was conducted by the Review Board on January 21, 2005 and was attended by the Madisons and the building official. A representative of the Loudoun County Attorney's Office was also present.

At the hearing it was determined that the Madisons had filed an appeal to the County USBC board concerning the November 15, 2004 decision of the building official. The County USBC board had heard the appeal and ruled at the hearing to uphold the building official's decision; however, no written decision had been issued by the County USBC board. The building official stated that the chairman of the County USBC board had been unavailable to sign the decision.

### III. FINDINGS OF THE REVIEW BOARD

The June 16, 2004 letter of the building official deciding that the Madisons' house was safe was based on the provisions of the USBC governing construction. Since that time, the building permits have been determined to be inactive. The building official has subsequently determined that the house was safe under the existing building provisions of the USBC. That decision was appealed to the County USBC board and upheld; however, at the time of the hearing before the Review Board no final order had been issued by the County USBC board.



Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

**\*Note:** The original signed final order is available from Review Board staff .